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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

CS Docket No. 99-230

In the Matter of

Annual Assessment of the Status of
Competition in Markets for the
Delivery of Video Programming

**REPLY COMMENTS OF SPEEDVISION NETWORK, L.L.C.
AND OUTDOOR LIFE NETWORK, L.L.C.**

Speedvision Network, L.L.C. and Outdoor Life Network, L.L.C. (jointly referred to as "the Networks") hereby submit Reply Comments in response to the Comments filed by EchoStar Satellite Corporation ("EchoStar").

In its Comments, EchoStar complains bitterly that "competition has yet to arrive in the MVPD markets" and that the Commission has "been remiss in tackling the substance" of related problems, including cable operators "preferential access" to cable programming.¹ In particular, EchoStar asserts that the "Cable Services Bureau has effectively abdicated its responsibility to enforce [the program access] rules."² As an example, EchoStar refers to the Bureau's denial of EchoStar's program access complaint against the Networks.³

¹ EchoStar Comments at 1-2.

² *Id.* at 2.

³ *Id.* at 3-4. See *EchoStar Communications Corporation v Speedvision Network, L.L.C., et al*, DA 99-1148 (rel. June 14, 1999) ("Order"). EchoStar's Application For Review is pending.

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It is regrettable that EchoStar is cluttering up this proceeding with a rehash of its losing argument before the Bureau and its argument to the Commission in the pending review proceeding. EchoStar also misrepresents the record below. In a rather curious cite to the *Order*, EchoStar asserts that the Bureau "unquestioningly" accepted the Networks' claim that the reason the Networks deauthorized EchoStar was due to a contract dispute over packaging, "even though all the evidence showed otherwise."⁴ The *only* reason the Networks deauthorized EchoStar was because EchoStar breached the packaging terms of the distribution agreement. There was no "evidence" that showed "otherwise."

We note at the outset that this is not the usual "refusal to deal" or "refusal to sell" case. This is not a matter where programming vendors, such as the Networks, refused to sell their programming to a distributor, such as EchoStar, or refused to initiate discussions about the sale of programming when the programmers have sold their programming to that distributor's competitor. Instead, in the instant case, after three years of negotiations between the parties and 14 formal offers of carriage made from the Networks to EchoStar, the parties entered into a mutually acceptable agreement on November 18, 1998. Thus, despite the length of negotiations, the Networks did deal with EchoStar and ultimately sold both Speedvision and Outdoor Life programming to EchoStar on terms agreed to by both parties. *If not for the alleged breach of contract on the part of EchoStar, the Networks would still be providing their programming to EchoStar.*⁵

The Bureau found that the critical issue underlying EchoStar's program access complaint was whether the Networks were justified in deauthorizing EchoStar's reception of the Networks' signals *after* EchoStar breached the clear and express packaging terms of the Agreement.⁶ The Bureau denied EchoStar's complaint precisely because resolution of

⁴ *Id.* at 4, citing *Order* at ¶ 23.

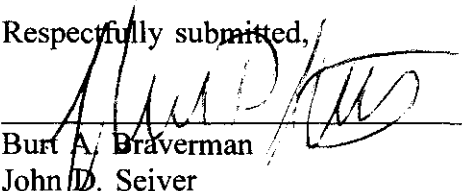
⁵ *Order* at ¶ 22 (footnote omitted) (emphasis supplied).

⁶ *Id.* at ¶ 23.

EchoStar's complaint was "inextricably intertwined" with the facts concerning Echostar's breach and the reasonableness of the Networks' deauthorization. *Id.* Those facts were already before a federal district court in a proceeding filed well before EchoStar filed its program access complaint. Because a court of competent jurisdiction had been presented with the same set of operative facts that form the basis of EchoStar's program access complaint, and that court was proceeding to make the necessary factual determinations on EchoStar's breach and the reasonableness of the Networks' deauthorization, it was inappropriate for the Bureau to adjudicate those same facts. "We will not substitute our judgment on these issues for that of the court." *Id.*

Accordingly, the Bureau acted properly in denying EchoStar's program access Complaint. EchoStar is simply unable to accept that it can be held accountable for its own misconduct. EchoStar's breach – and nothing more – was the reason its customers lost the Networks' programming. EchoStar's misguided attack on the Bureau has absolutely nothing to do with the "status of competition" being assessed in this proceeding and should be ignored.

Respectfully submitted,


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September 1, 1999

CERTIFICATE OF SERVICE

I, Judy Easterday, do hereby certify that on this 1st day of September, 1999, a true and correct copy of the foregoing Reply Comments was served by first class United States mail, postage prepaid, upon each of the following:

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